

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

ADT, LLC, A WHOLLY-OWNED SUBSIDIARY OF ADT  
CORPORATION D/B/A ADT SECURITY SERVICES

and

05-CA-127502

OFFICE AND PROFESSIONAL EMPLOYEES  
INTERNATIONAL UNION, LOCAL 2, AFL-CIO

*Clark Brinker and Sean R. Marshall, Esqs.*

for the General Counsel.

*Bernard P. Jeweler, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Washington, D.C.)*

for the Respondent.

*James F. Wallington, Esq., (Baptiste & Wilder, P. C. )*

for the Charging Party.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan,, Administrative Law Judge. This case was tried in Washington, D.C. on October 2, 2014. The Office and Professional Employees International Union, Local 2 filed the charge on April 24, 2014. The General Counsel issued the complaint on July 31, 2014.

The General Counsel alleges that Respondent ADT violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union information that the Union requested relating to Respondent's discontinuance of its commission compensation program for employees represented by the Union in three different bargaining units. Respondent contends that it is not required to provide this information because the Union waived its bargaining rights over this issue.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

## FINDINGS OF FACT

## I. JURISDICTION

Respondent, ADT, a corporation, sells, installs, services and monitors commercial and residential alarm systems. It operates nationwide and maintains an office in Boca Raton, Florida. Respondent annually derives gross revenues in excess of \$500,000 and performs services in excess of \$5,000 outside of the State of Florida. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Office and Professional Employees International Union, Local 2, is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

Respondent employed 2,483 installers in the United States as of April 17, 2014. As of that date, 1,516 were paid an hourly rate and many others were paid via commission. The program under which commissions are paid is called the High Velocity Commissioned Installation (HVCI) program.

The Charging Party Union represents installers, service technicians and clerical employees in three bargaining units: 1) Columbia, Maryland (about 60 unit members); 2) Springfield, Virginia and Lanham, Maryland (about 130 members in the 2 locations) and 3) Gaithersburg, Maryland (about 40 members). There are three different collective bargaining agreements for these units. About half the employees in each unit are installers.

The agreement covering Columbia expires November 23, 2014; the agreement covering Springfield and Lanham expires in September 2015 and the agreement covering Gaithersburg expired on October 31, 2012. In Gaithersburg, the parties are governed by a summary of agreement reached in February 2014, as well as by the expired collective bargaining agreement.

The Columbia, Springfield/Lanham agreements and the 2014 summary of agreements for Gaithersburg contain the following language regarding the HVCI program:

The Employer reserves the right to eliminate and reinstate the High Volume Commissioned Installer program at any time and/or transfer employees between HVCI and hourly installation as business needs dictate.

G.C. Exh. 2 p. 13; G.C. Exh. 3 p. 16; G.C. Exh. 5, p. 1.

In late March or early April 2014, Respondent's Labor Relations Director, James Nixdorf, informed union business representative George Kapanoske that Respondent was discontinuing the HVCI program in the Columbia, Springfield/Lanham and Gaithersburg bargaining units. This became effective April 16, 2014.

On April 11, 2014 Kapanoske sent Nixdorf a letter, G.C. Exh. 8, in which the Union demanded bargaining on the decision and effects of the decision to discontinue the HVCI

program in these three bargaining units. He also asked Respondent to provide the following information:

The business justification for the change.

The payroll records for all HVCI installers for the past three years; and

The locations and dates of other offices where this change is being implemented and whether or not each is a Union or non-union shop.

Nixdorf responded on April 18. He stated that Respondent:

maintains that the contract language is clear and the Union has ceded its ability to bargain over this issue. In addition since no right to bargain exists the union is not entitled to demand information for such bargaining. As a matter of courtesy, I believe the following will suffice as a response to your request for information:

As of 4/17/2014, ADT currently has 2483 installers in the US. Of that number 1516 are hourly. There are 184 locations in the US of which 35 (28 union) are exclusively hourly.

G.C. Exh. - 9.

The figures provided in Nixdorf's April 18 letter included the St. Louis, Missouri unionized location where the HVCI had been recently discontinued. These figures did not include other unionized locations where the discontinuation of the program was "in the works."

The Regional Director for NLRB Region 5 refused to issue a complaint based on the Union's charge that Respondent refused to bargain over the discontinuance of the HVCI compensation program. The Union filed an appeal, which was denied by the General Counsel's Office of Appeals on September 26, 2014. The Office of Appeals also stated that Respondent was not obligated to bargain over the effects of its decision since the only effect was to apply the terms and conditions of the hourly installers. The Appeals Office further noted that the Union had not made a Section 8(a)(3) discrimination allegation in its charge. Thus the issue in this matter is solely whether Respondent was obligated to provide the Union with the information it requested in its April 11 letter.

### *Analysis*

Ordinarily, information concerning unit employees' terms and conditions of employment is presumptively relevant and must be provided. However, when a union waives its right to bargain over a change to a term or condition of employment, it is no longer entitled to information requested for that purpose, *American Stores Packing Co.*, 277 NLRB 1656, 1658-59 (1986); *Emery Industries, Inc.*, 268 NLRB 824, 824-825 (1984).

The Union is entitled to such information only if it gives the employer actual or constructive notice of another legitimate basis for requesting the information. In this case, I find that the waiver language in the collective bargaining agreements is so broad that it gives

Respondent a carte blanche to eliminate the HVCI program. Thus, I find that Respondent was not obligated to give the Union any further information as to the business justification for the change.

5           The situation with regard to the other information requested is a bit different. Respondent admits that the Union is entitled to the payroll records of HVCI installers represented by the Union, but apparently did not provide this information. While the Union request is not limited to HVCI installers represented by the Union, Respondent violated the Act in not providing those records. If Respondent did not understand that this was all the Union was seeking, it was required to either seek a clarification or comply with the request by providing the payroll records of unit installers, *Superior Protection, Inc.*, 341 NLRB 267, 269 (2004) enfd. 401 F. 3d 282 (5<sup>th</sup> Cir. 2005).

15           Due to the Union's waiver, it is not entitled to the information regarding other locations where HVCI is being eliminated for purposes of bargaining a change in the existing contracts. However, given the fact that the collective bargaining agreement in the Columbia bargaining unit expires in November 2014 and for Lanham/Springfield in 2015, I conclude Respondent is obligated to provide this information for purposes of bargaining a new contract. The fact that Respondent has a duty to bargain about a new contract distinguishes this case from *American Stores Packing*, in which the employer had no such duty. The Union might use this information to bargain for restoration of the HVCI program in Columbia and Lanham/Springfield, or a higher hourly wage for unit installers.

25           The Union did not specify future bargaining as its purpose for requesting the information. However, where the circumstances surrounding the request are reasonably calculated to put the employer on notice of a relevant purpose which the union has not specifically spelled out, the employer is obligated to divulge the requested information, *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018 (1979) enfd. 615 F.2d 1100 (5<sup>th</sup> Cir. 1980).

30           In light of the upcoming expiration of the Columbia and Lanham/Springfield contracts, I find that Respondent could reasonably anticipate the relevance of this information to the Union in formulating contract proposals in advance of bargaining. At a minimum, the information would be useful, in conjunction with additional information requests, in determining why the business interests of Respondent necessitated cessation of the HVCI program at some locations, but not at others. Conceivably the Union could then formulate bargaining proposals that would make restoration of the HVCI program in its three bargaining units more attractive to Respondent.

40           In conclusion, I find Respondent was on notice that one of the Union's reasons for requesting the information was in order to formulate bargaining proposals. Accordingly, I find that Respondent's refusal to divulge this information was a refusal to bargain in violation of Section 8(a)((5) and (1).

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent is hereby ordered to bargain with the Union as the exclusive collective bargaining representative of the installers, technicians and administrative employees at its facilities in Lanham, Maryland, Springfield, Virginia, Columbia, Maryland and Gaithersburg, Maryland by providing the Union with the following information requested by the Union on April 11, 2014: the payroll records for all unit installers who were compensated via the HVC I program at any time since April 11, 2011, since that date; the locations and dates of other offices where the HVC I program has been discontinued and whether or not each of these locations is a union or non-union facility.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

## ORDER

The Respondent, ADT, LLC, Boca Raton, Florida its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Refusing to bargain with Office and Professional Employees International Union, Local 2, AFL-CIO, as the exclusive bargaining representative of the employees in its Lanham, Maryland, Springfield, Virginia, Columbia, Maryland and Gaithersburg , Maryland bargaining units and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees;

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the following information it requested on April 11, 2014: the payroll records for all unit installers who were compensated via the HVC I program at any time since April 11, 2011, since that date; the locations and dates of other offices where the HVC I program has been discontinued and whether or not each of these locations is a union or non-union facility.

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<sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- (b) Within 14 days after service by the Region, post at its facilities in Lanham, Maryland, Springfield, Virginia, Columbia, Maryland and Gaithersburg, Maryland copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 5 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 11, 2014.
- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 12, 2014

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Arthur J. Amchan  
Administrative Law Judge

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<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Office and Professional Employees International Union, Local 2, AFL-CIO, as the exclusive bargaining representative of the employees in our Lanham, Maryland, Springfield, Virginia, Columbia, Maryland and Gaithersburg, Maryland bargaining units and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the following information it requested on April 11, 2014: the payroll records for all unit installers who were compensated via the HVCi program at any time since April 11, 2011, since that date; and the locations and dates of other offices where the HVCi program has been discontinued and whether or not each of these locations is a union or non-union facility.

ADT, LLC, A WHOLLY-OWNED SUBSIDIARY  
OF ADT CORPORATION D/B/A ADT SECURITY  
SERVICES

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(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

Bank of America Center, Tower II, 100 S. Charles Street, Ste 600, Baltimore, MD 21201-2700  
(410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/05-CA-127502](http://www.nlr.gov/case/05-CA-127502) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (410) 962-2880.